

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CORTNEY L LEWIS
Claimant

A-1 IOWA DENTAL PLLC
Employer

APPEAL 18A-UI-05311-NM-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/08/18
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the April 26, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 25, 2018. The claimant participated and testified. The employer participated through Regional Managers Vishal Pandya and Vishal Patel. Claimant's Exhibits A through C, M, and O.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a dental assistant from September 2017, until this employment ended on April 12, 2018, when she voluntarily quit.

On April 12, 2018, claimant submitted her resignation, effective immediately, to the employer. (Exhibit A). Claimant explained she was resigning because she feared for her safety and the status of her license due to practices of the office. According to claimant, on March 29, 2018, one of the machines used to clean instruments broke down. Standards set by OSHA and the Iowa Dental Board require all instruments to go through two machines, one of which was the machine that had broken down. The dentist working in the office that day instructed claimant to just skip that step in the process, as they had approximately 40 patients left to see that day. Claimant refused and because of her refusal no additional patients were seen until the machine

was repaired. The employer testified it was not aware of this situation when it occurred and has not spoken to the dentist about the allegations since learning of them. Claimant further testified there was a machine in the office, an autoclave, which was required to be registered with the State of Iowa, but was not. Based on these concerns, claimant decided to contact the Iowa Dental Board. The employer testified all of the machines that are required to be registered are registered.

Prior to making contact with the dental board, on April 9, 2018, there was an incident where law enforcement was called to the office after two employees became engaged in a disagreement and one employee threatened to slit the other employee's throat. Claimant testified this incident put her in fear of her safety. The employer acknowledged this incident occurred, but testified it was a personal disagreement between the two employees and no other employees were at risk. Claimant ultimately decided to resign on April 11, 2018 after speaking with someone at the dental board who advised her, based on the information she was reporting on the office, to find another job so as to not risk her own license.

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 8, 2018. The claimant filed for and received a total of \$2,092.00 in unemployment insurance benefits for the weeks between April 8 and May 19, 2018. Both the employer and the claimant participated in a fact finding interview regarding the separation on April 25, 2018. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment with good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.26(2-4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(2) The claimant left due to unsafe working conditions.

(3) The claimant left due to unlawful working conditions.

(4) The claimant left due to intolerable or detrimental working conditions.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Ia. Dist. Ct. App. 1973). A notice of an intent to quit had been required by *Cobb v. Emp't Appeal Bd.*, 506 N.W.2d

445, 447-78 (Iowa 1993), *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Emp't Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Those cases required an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. However, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to rule 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

The claimant provided unrefuted testimony that, on March 29, 2018, she was asked by a doctor to skip required steps for cleaning dental tools. This would have required her to break the law and put her license at risk. Claimant further provided credible testimony that when she called the dental board to report the incident she was advised to quit in order to avoid risking her license. Claimant also provided testimony involving an altercation between two employees in the workplace. The employer contends, because the issue was personal in nature between the employees, that other employees should not feel at risk. This perspective is concerning, as any kind of violence in the workplace has the potential to place any employee at risk. The fact that claimant was ordered to act in manner that violated state law and proper safety procedures, in and of itself, created an intolerable work environment for claimant that gave rise to a good cause reason for leaving the employment. Benefits are allowed, provided claimant is otherwise eligible. As benefits are allowed, the issues of overpayment and participation are moot.

DECISION:

The April 26, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. The issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs